

Timothy Galarnyk )  
 )  
 v. ) ORDER  
 )  
 Captain Tom Fraser et al. )

This matter is before the Court for consideration of the Report and Recommendation issued by the Honorable Arthur J. Boylan, United States Magistrate Judge, on June 25, 2009 [Docket No. 36]. The Report recommended that defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) be granted in part and denied in part; and that defendants' alternative motion for summary judgment be denied. Defendants timely filed objections pursuant to Local Rule 72.2.

Based on a de novo review of the record, the Court adopts the Magistrate's Report and Recommendation in part. Counts I, II, III, and V of the Complaint state a claim, and survive defendants' motion to dismiss. Count VI fails to state a claim, and is dismissed with prejudice. Likewise, plaintiff has not properly pleaded his demand for punitive damages under Minn. Stat. § 549.191, and therefore, that demand is stricken from the Complaint.

The Court declines to adopt the Report and Recommendation with respect to Count IV of the Complaint, which alleges a conspiracy to violate plaintiff's constitutional rights. Plaintiff has not alleged facts sufficient to show defendants' "mutual understanding"

or "meeting of the minds." See Smith v. Bacon, 699 F.2d 434, 436-37 (8th Cir. 1983). The conspiracy allegations are dismissed without prejudice.

Accordingly, IT IS ORDERED that:

1. Defendants' motion to dismiss [Docket No. 18] is granted in part and denied in part. Defendants' alternative motion for summary judgment is denied.
2. Count IV, alleging conspiracy, is dismissed without prejudice.
3. Count VI, alleging an equal protection claim, is dismissed with prejudice.
4. The demand for punitive damages is stricken from the Complaint.

Dated: September 8, 2009

s/ JAMES M. ROSENBAUM  
JAMES M. ROSENBAUM  
United States District Judge